

641—162.12(135) Contested case hearings. Any problem gambling treatment program that wishes to contest the denial, suspension, revocation or refusal to renew a license shall be afforded an opportunity for a hearing before an administrative law judge from the department of inspections and appeals. The department shall notify the problem gambling treatment program in writing, return receipt requested, of the date of the hearing not less than 30 days before the hearing.

162.12(1) Failure to appear. If a party fails to appear in a contested case hearing proceeding after proper service of notice, the administrative law judge shall, in such a case, enter a default judgment against the party failing to appear.

162.12(2) Conduct of hearing. The administrative law judge shall afford all parties opportunity to respond to and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

a. The hearing shall be informal and all relevant evidence shall be admissible. Effect shall be given to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. The hearing shall be expedited and the interests of the parties shall not be prejudiced substantially. Any part of the evidence may be required to be submitted in verified written form.

b. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

c. Witnesses present at the hearing shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

d. The record in a contested case shall include:

- (1) All pleadings, motions and intermediate rulings.
- (2) All evidence received or considered and all other submissions.
- (3) A statement of all matters officially noticed.
- (4) All questions and offers of proof, objections and rulings therein.
- (5) All proposed findings and exceptions.
- (6) Any decision, opinion or report by the officer presiding at the hearing.

e. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the problem gambling treatment program for at least five years from the date of decision.

f. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

162.12(3) Continuance. For good cause, the administrative law judge may either continue a hearing beyond the time originally scheduled or may recess the hearing. Requests for continuance shall be made to the administrative law judge in writing at least three days prior to the scheduled hearing date. The administrative law judge shall not grant continuances less than three days before the hearing except for exigent circumstances.

162.12(4) Decision. Findings of fact shall be based solely on the evidence in the record and upon matters officially noticed in the record.

a. The decision of the administrative law judge shall be a final decision unless there is an appeal to the department within 20 days of the receipt of the decision.

b. A proposed or final decision or order in a contested case hearing shall be in writing. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Parties shall be promptly notified of each proposed or final decision or order by delivery of a copy of the decision or order by certified mail, return receipt requested. In the case of a proposed decision, the department shall notify the parties of the right to appeal the decision to the department director.

162.12(5) *Appeal to the department director.*

a. Either party may request that the department director review the proposed decision. The request shall be in writing and delivered by certified mail, return receipt requested, within 20 days of receipt of the proposed decision.

b. The parties shall have an opportunity to submit briefs to the department director. The department director shall review the record and any briefs. No new evidence shall be admitted unless requested and allowed by the department director.

c. The department director shall issue a decision in writing within 90 days after receiving the request to review the proposed decision.